APPENDIX
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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 81-1812

MAUDELL H. FALLAW,

Appellee,

v.

MICHELIN TIRE CORPORATION and
LA MANUFACTURE FRANCAISE DES
PNEUMATIQUES MICHELIN,

Appellants.

No. 81-1813

FLETCHER L. FALLAW,

Appellee,

v.

MICHELIN TIRE CORPORATION and
LA MANUFACTURE FRANCAISE DES
PNEUMATIQUES MICHELIN,

Appellants.

No. 81-1314

SOUTHEASTERN FREIGHT LINES,

Appellee,

v.

MICHELIN TIRE CORPORATION and
LA MANUFACTURE FRANCASIE DES
PNEUMATIQUES MICHELIN,

Appellants.

Appeals from the United States District Court for the District of South Carolina, at Charleston. C. Weston Houck, District Judge.

Argued February 2, 1982 Decided May 20, 1982

Before WINTER, Chief Judge, BRYAN, Senior Circuit Judge, and PHILLIPS, Circuit Judge.

Sam Daniels (Daniels and Hicks; John M. Kenney, John M. Kenney, P.C.; Joseph R. Young, Young, Clement, Rivers & Tisdale; Wade H. Logan, III, Holmes, Thomson, Logan & Cantrell on brief) for Appellants; Cody W. Smith, Jr. (Solomon, Kahn, Smith & Baumil on brief) for Appellees.

PER CURIAM:

This diversity action for personal injuries arose from a collision between a tractor-trailer unit and a tanker rig, the latter being equipped with tires manufactured by defendants, one of which blew out in the course of the collision. As a result of a stipulation between the parties entered into after a prior appeal, the determinative question as to liability was whether the tire blew out without being penetrated by an external object or whether the blowout resulted from the penetration of an external object.

On conflicting evidence, the jury found that the tire blew out without being penetrated by an external object and it awarded substantial damages to plaintiffs. Defendants appeal contending that the judgment entered on the verdict should be reversed and a new trial awarded because of reversible error in (1) the failure of the juror who was selected as foreman to disclose that as a plaintiff she had settled a personal injury claim and had another pending while she served in the instant case, and the failure of two other jurors to disclose that they had prior experience with tire blowouts, despite interrogation on voir dire about both subjects, and (2) the admission into

evidence of a portion of a written statement of the deceased driver of one of the vehicles taken by an insurance adjustor.

We affirm.

VOIR DIRE

A. Failure To Disclose Personal Injury Claims.

The entire venue was questioned by the district court as follows:

> Have any of you ever been a Plaintiff or a Defendant in an action brought for damages? If so, please stand and give your name.
>
> Has anyone ever sued you or have you ever sued anybody for money as a result of damages or injuries you or that other person allegedly sustained? If so, please stand.

Mrs. Caryl C. Polk, who was appointed foreman of the jury by the district court after all of the evidence was received, did not respond to either question. At a post-verdict hearing, it was shown that she had brought a suit for personal injuries as a result of an automobile accident in 1974, that that case was settled, that she had been involved in an accident in December 1980, and that after retaining counsel that case was also settled after the trial of the instant case. The 1974 accident did not involve the blowout of a tire, nor did Mrs. Polk sustain injuries comparable to those of the plaintiff in the instant case. The details of the 1980 accident were not developed.

Mrs. Polk testified that she was sitting in the back of the courtroom during voir dire and heard neither question about whether she had been sued or sued anyone. She did not communicate the fact of either accident to other jurors, and she also testified that she did not intentionally or deliberately withhold information from the district court.

The district court found that Mrs. Polk did not intentionally or deliberately withhold information and it concluded that defendants were not prejudiced by her service as a juror.

B. Failure To Disclose Blowout Experience.

The venire was also asked:

> Have any of you or members of your immediate family, close friends of business associates ever operated or been a passenger in a vehicle when a tire blew out? If so, please stand and explain the circumstances.

Neither Mrs. Pennington nor Mrs. Carrigg, both of whom served as jurors, responded to this question.

In the post-verdict proceedings, it was established that about ten years before, Mrs. Pennington had been operating a vehicle when a tire blew out. She testified that the incident was so insignificant that she did not recall it during voir dire and she did not recollect it until she was questioned during a lengthy telephone conversation by defendants' lawyers. She also testified that she did not remember the make of the tire involved nor the nature of the problem with the tire. She did not consider the tire defective and she received no injuries. She claimed that she had not knowingly withheld information from the district court.

Mrs. Carrigg, too, had had an experience comparable to a blowout. She had steered her vehicle into a curb to avoid a collision with another vehicle and the impact with the curb caused her tire to blow out. She said that her experience was unlike the evidence that she had heard in the instant case.

The district court found that neither juror had intentionally failed to respond to voir dire. With regard to Mrs. Carrigg, the court expressed doubt as to whether her experience constituted a blowout, and, with regard to Mrs. Pennington, found that she had not recalled her experience during voir dire. Based upon other testimony, the district court found that neither juror had discussed her experience in the jury room and that the experiences of both were dissimilar to what happened in the case at bar.

C. Discussion And Ruling.

With respect to all three jurors, the district court found the absence of any intention to withhold information, and we accept that finding as not clearly erroneous. Had there been deliberate untruthfulness, at least when compounded by possible bias, defendants would have been entitled to a new trial. *See United States* v. *Bynum*, 634 F.2d 768, 771 (4 Cir. 1980); *McCoy* v. *Golstein*, 652 F.2d 654, 658 (6 Cir. 1981). But, here, where the nondisclosure was not deliberate, the only inquiry is whether the jurors' post-verdict responses disclosed actual bias or prejudice as a matter of law. *See United States* v. *Vargas*, 606 F.2d 341, 344 (1 Cir. 1979); *United States* v. *Mulligan*, 573 F.2d 775, 777 (2 Cir.), *cert. denied*, 439 U.S. 827 (1978). We think that these jurors' answers did not satisfy this test. In the case of Mrs. Polk, neither of her accidents was shown to have any similarity to the case she was hearing and neither was shown to have involved a blowout. In as litigious a country as the United States and in as litigious an era as the present, we cannot say as a matter of law that one who has been a litigant is ineligible from that fact alone for jury service in a suit for personal injuries. With regard to Mrs. Carrigg and Mrs. Pennington, the possibility of bias or prejudice is even less. While Mrs. Pennington had had experience with a blowout, the incident was so remote and so insignificant that she did not recall it, or, when her recollection was refreshed, any of its significant details. Mrs. Carrigg's experience, while technically, perhaps, with a blowout, was so dissimilar to the case in which she sat that we cannot conclude that her ability to be an objective juror was adversely affected.

ADMISSIBILITY OF WRITTEN STATEMENT

Mr. Mitchell Barnhill was the operator of the tanker rig which was involved in the collision. Within the period of five to fifteen minutes after the collision, he made several comments about how the accident occurred to other truck drivers who had stopped to give assistance. At trial, they were permitted to testify about what Barnhill had said, apparently under the

excited utterance exception to the rule against hearsay. Rule 803(a), Fed. R. Evid. His statements were to the effect that he heard a loud explosion and thereafter felt an impact to his vehicle.

A week after the accident, Barnhill was interviewed by an insurance adjustor and gave a written, unsworn statement which he signed, page by page. By the time of the trial, Barnhill had died from causes unrelated to the accident, and at trial, a portion of his statement was read to the jury. The statement, in essence, was that the explosion occurred before the impact, a most material fact under the stipulation of the parties as to liability. The district court ruled this portion admissible under Fed. R. Evid. Rules 803(24) (the catchall "other exceptions" exception to the rule against hearsay) and 804(b)(5) (permitting admission of written statements given under certain guarantees of trustworthiness).

We think it debatable whether the statement was admissible under the rules, but it is unnecessary for us to resolve the issue. Even if inadmissible, the portion of the statement admitted was merely cumulative of the excited utterances which were clearly admissible. Any error was therefore harmless.

AFFIRMED.

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 81-1812

MAUDELL H. FALLAW,

Appellee,

v.

MICHELIN TIRE CORPORATION and
LA MANUFACTURE FRANCAISE DES
PNEUMATIQUES MICHELIN,

Appellants.

FILED
Jun 14 1982
John W. Williams, Clerk
U.S. District Court

Appeal from the United States District Court for the _____ *District of* South Carolina

This cause came on to be heard on the record from the United States District Court for the _____ *District of* South Carolina, *and was argued by counsel.*

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

FILED
May 20 1982
U.S. Court of Appeals
Fourth Circuit

/s/ William K. Slate II
WILLIAM K. SLATE II
Clerk

COSTS—APPELLANTS

Costs of printing appellees' brief	$204.00
Total Costs	$204.00

A True Copy, Teste:
William K. Slate, II, Clerk

/s/ By Linda Y. Dorsey
LINDA Y. DORSEY
Deputy Clerk

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 81-1813

FLETCHER L. FALLAW,

Appellee,

v.

MICHELIN TIRE CORPORATION and
LA MANUFACTURE FRANCAISE DES
PNEUMATIQUES MICHELIN,

Appellants.

FILED
Jun 14 1982
John W. Williams, Clerk
U.S. District Court

Appeal from the United States District Court for the _____ *District of* South Carolina

This cause came on to be heard on the record from the United States District Court for the _____ *District of* South Carolina, *and was argued by counsel.*

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District

Court appealed from, in this cause, be, and the same is hereby, affirmed.

/s/ William K. Slate II
WILLIAM K. SLATE II
Clerk

FILED
May 20 1982
U.S. Court of Appeals
Fourth Circuit

A True Copy, Teste:
William K. Slate, II, Clerk

By Linda Y. Dorsey
LINDA Y. DORSEY
Deputy Clerk

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 81-1814

SOUTHEASTERN FREIGHT LINES,

Appellee,

v.

MICHELIN TIRE CORPORATION and
LA MANUFACTURE FRANCASIE DES
PNEUMATIQUES MICHELIN,

Appellants.

FILED
Jun 14 1982
John W. Williams, Clerk
U.S. District Court

Appeal from the United States District Court for the _____ *District of* South Carolina

This cause came on to be heard on the record from the United States District Court for the _____ *District of* South Carolina, *and was argued by counsel.*

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District

Court appealed from, in this cause, be, and the same is hereby, affirmed.

/s/ William K. Slate II
WILLIAM K. SLATE II
Clerk

FILED
May 20 1982
U.S. Court of Appeals
Fourth Circuit

A True Copy, Teste:
William K. Slate, II, Clerk

By Linda Y. Dorsey
LINDA Y. DORSEY
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Civil Action File No. 77-1348-2

MAUDELL H. FALLAW

Plaintiff

v.

MICHELIN TIRE CORPORATION and
LA MANUFACTURE FRANCAISE DES
PNEUMATIQUES MICHELIN

Defendants

FILED
Mar 30 1981
MILLER C. FOSTER, JR.,
Clerk
Charleston, S.C.

JUDGMENT

This action came on for trial before the Court and a jury, Honorable C. WESTON HOUCK, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged that the Plaintiff Maudell H. Fallaw recover of the defendants Michelin Tire Corpration and La Manufacture Francaise Des Pneumatiques Michelin the sum of One Hundred Thousand ($100,000.00) Dollars, Actual Damages and her costs of action.

Dated at Charleston, South Carolina, this 30th day of March, 1981.

ENTERED
3/30/81

Miller C. Foster, Jr.
MILLER C. FOSTER, JR.
Clerk of Court

/s/ By Patricia M. Chisolm
PATRICIA M. CHISOLM
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Civil Action File No. 77-1350-2

FLETCHER L. FALLAW, By Maudell H. Fallaw,
Guardian Ad Litem

Plaintiff

v.

MICHELIN TIRE CORPORATION and
LA MANUFACTURE FRANCAISE DES
PNEUMATIQUES MICHELIN

FILED
Mar 30 1981
MILLER C. FOSTER, JR.,
Clerk
Charleston, S.C.

JUDGMENT

This action came on for trial before the Court and a jury, Honorable C. WESTON HOUCK, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged that the Plaintiff Fletcher L. Fallaw, by Maudell H. Fallaw, Guardian Ad Litem, recover of the defendants Michelin Tire Corporation and La Manufacture Francaise Des Pneumatiques Michelin the sum of One Million, Two Hundred Fifty Thousand ($1,250,000.00) Dollars, Actual Damages and his costs of action.

Dated at Charleston, South Carolina, this 30th day of March, 1981.

ENTERED
3/30/81

Miller C. Foster, Jr.
MILLER C. FOSTER, JR.
Clerk of Court

/s/ By Patricia M. Chisolm
PATRICIA M. CHISOLM
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Civil Action File No. 77-1352-2

SOUTHEASTERN FREIGHT LINES

Plaintiff

v.

MICHELIN TIRE CORPORATION and
LA MANUFACTURE FRANCAISE DES
PNEUMATIQUES MICHELIN

Defendants

FILED
Mar 30 1981
MILLER C. FOSTER, JR.,
Clerk
Charleston, S.C.

JUDGMENT

This action came on for trial before the Court and a jury, Honorable C. WESTON HOUCK, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged that the Plaintiff Southeastern Freight Lines recover of the defendants Michelin Tire Corporation and La Manufacture Francaise Des Pneumatiques Michelin the sum of Twenty Thousand Five Hundred ($20,500.00) Dollars Actual Damages and their costs of action.

Dated at Charleston, South Carolina, this 30th day of March, 1981.

ENTERED
3/30/81

Miller C. Foster, Jr.
MILLER C. FOSTER, JR.
Clerk of Court

/s/ By Patricia M. Chisolm
PATRICIA M. CHISOLM
Deputy Clerk

ORAL PRONOUNCEMENTS OF DISTRICT JUDGE, HONORABLE C. WESTON HOUCK, JULY 9, 1981

[10] We now come to the question of the conduct of the jurors. It's very disturbing to me that we would go to the trouble that we do go to in asking questions and then find out that either the parties don't hear the questions, or they don't pay any attention to them, and it disturbs me that that's the case here. It disturbs me that you did not have all of the knowledge that you should have and all of the knowledge that I sought to make available to you in order to intelligently select this Jury. But I think in a situation like this, the case law that I think is applicable [11] requires me to go a little bit further. I'm sure that the reason for that is that we have got to balance this thing out.

We can't come in and try a case for an extended period of time and then just because of one little miscue that a juror failed to reveal or one big miscue, depending on which side of the table you are sitting on, we try it all over again. As you said, Mr. Logan, if we did that, we would be endeavoring to give all parties a perfect trial rather than a fair trial, and I think a fair trial does not require that.

As I understand the Rule, you are entitled to a correct answer on Voir Dire. The fact that I'm not required to put them on Voir Dire, I don't really think makes any difference. I have not studied all of the cases that have been cited to me in such depth as to determine the circumstances under which the Voir Dire questions were asked. I dare say in some Districts or some States, it may be mandatory. Certainly in this State in this District, as I understand it, my asking the Voir Dire questions in a civil action is a courtesy to the attornevs. At least that's the way I approach it. I approach it that way, because it doesn't make any difference, I am going to ask them anyway, but it would be interesting to know whether in [12] those questions, we found out that the questions were mandatory, and whether the Courts would look at that differently or not. But I am not going to look at it from that standpoint, because I think no matter what reason I give for asking the questions, certainly

you are entitled to rely on the answers, and by "you," I mean all parties, and that's the purpose of them, and I think you are entitled to truthful answers.

The dilemma we're in here is we have got less than truthful answers, and just how untruthful they have to be before we do it all over again is our decision. I think the courts say in order to grant a new trial under such circumstances, that I must find at least one of two things: First, that the failure to answer was intentional; or that it was prejudicial.

Now, I have a hard time making a two-prong test out of that. I prefer to rely on the prejudicial nature of it and ignore whether it was inadvertent or whether it was intentinoal, because I think really they all merge together. I can't see any reason for placing such great inferences on the intent unless you go assume thereby that anybody that intentionally mis-answers a question must have it in for one of the parties, and, therefore, he is out to do them wrong on the case. I really can't see why there's so much emphasis placed [13] on the intentional part of it, but the law is that, and I am going to deal with it in that way.

I find in this case that none of the questions were answered untruthfully or that truthful answers were not given intentionally by the jurors that you have called. The burden is on the Defendants to establish that, and I do not think that you have established it.

Mrs. Pennington, I'm satisfied with her explanation. She said that she had a blowout in the latter 60's or early 70's while driving a 1962 or '63 Cadillac. She said it was so insignificant she did not remember it at the time of the Voir Dire. I haven't read the entire transcript of what took place, but in thumbing through it, I did note on page eighteen that she stood up and says, "I am Ruby Pennington. My brother-in-law drives for Global Truck Lines."

It seems to me that in her particular case, the fact that she stood up and admitted that her brother-in-law was a truck

driver seems to me that that weighs heavily against her intentionally keeping from the you the question of the blowout. I think her explanation is sufficient, and I accept it. I do not think that there is any showing or sufficient showing in this case that her failure to answer that question concerning a [14] blowout was intentional.

Edna Elmore, of course, you have explained why she was questioned. She said that she did not have a blowout. Absent any other proof to the contrary, therefore, I must assume that she answered the question truthfully. The only other proof was that Lester Carrigg said that to the best of her recollection the two people that mentioned it were Mrs. Pennington and Mrs. Elmore. I think the record will clearly show that Mrs. Carrigg was far from positive on it, and I don't think that her statement that to the best of her recollection it was Mrs. Elmore would be sufficient to establish to my satisfaction that Mrs. Elmore improperly answered the question in the face of her denial that she had ever had a blowout.

Lester G. Carrigg. She stated that to the best of her recollection, two jurors, Mrs. Pennington and Mrs. Elmore, mentioned during the week, and I am sure she meant during the trial of the case and not during deliberations, that they had a blowout. There's no evidence that they compared the tire in her case or in their case with the tire in this case. There's not testimony that they brought out the circumstances under which they had a blowout. The only testimony was that they mentioned that they had a blowout during [15] the trial. We don't know who the other juror was. We do know that one of them was Mrs. Pennington, and I have already stated that I do not think that her failure to answer the question concerning blowouts was an intentional failure. Obviously, I can't say about the other one, because I don't know who it was, I don't know the circumstances, so I am just going to say in that case I think the Defendants have failed to carry the burden of establishing that that failure, if in fact here was such a failure, was an intentional one.

Mrs. Carrigg herself admitted on the stand, I gather much to the surprise of all the attorneys, but probably more to the surprise of Mr. Smith than anyone else, that she herself had a blowout. She was not asked any particulars as to why she didn't answer the question when I asked it, and, therefore, I cannot say that you have established that she intentionally failed to answer that question, because she wasn't asked that question, and I think the burden was on you to bring that out. She did say that she hit a curb and the tire blew out there, which would seem to me to be—I don't even know whether you would call that a blowout or not. I think of a blowout is if you are riding down the road and the tire blows out. I don't think of it if you are running into a building and [16] knock a hole in the tire, so there is no attempt to show that she intentionally didn't answer the question, but based upon her explanation, it seems to me that a reasonable inference would be that reasonable men would differ as to whether or not you would really call that a blowout. I would have some doubts in my mind as to whether that would be one.

The second prong of the test, as I see it, is prejudice. As to the question of the blowout, I just can't see where there's any prejudice. There's no testimony that there was any attempt to analyze this accident based upon what happened in an earlier blowout. There's no evidence that there was any similarity between the others' blowouts that the jurors experienced and the one in this case. There's just no similarity at all between them. There's no way that I think a reasonable man could conclude, I hope I'm a reasonable man, that your rights to a fair trial were prejudiced by the failure of these jurors to disclose that they had had these prior experiences, and I find that you were not prejudiced because of their failure to accurately answer the Voir Dire questions concerning blowouts.

Caryl C. Polk. She said she didn't hear me. That's very difficult for me to accept because as Mr. [17] Logan has mentioned, I went into it very carefully. If I said "Plaintiff" or "Defendant," then I can see where somebody would become confused with that, but I said, "Has anybody ever sued you for

any money or you ever sued anybody for any money?" I think a five-year-old kid ought to know what I was talking about, at least know enough to answer the question.

I sat here throughout the trial and watched her. I selected her as Foreperson. I don't select a Foreperson until well into the trial. I don't recall when I did it in this case, but most of the time I don't do it until the end of the trial. I do it because I think that person is the best qualified person to be in charge of that Jury. I would think I did it either right before I charged the Jury or right before you argued the case to the Jury. Sometimes in terms where I hear more than on case and kind of get to know a Jury, I might do it at the beginning, because I know who I am going to select, but with only one case being tried at this term, in all probability I didn't select her until the end.

Obviously, I thought she was paying attention. She was taking notes, and I think I might have picked up on it if I thought she was deaf. She seemed to me like she could hear pretty good, so it's hard for me [18] to see how she could hear what was going on in this courtroom but then say that she didn't hear it.

This is where it gets difficult for me, because this is the point where I think that two-prong requirement of either intentional failure to tell the truth, answer Voir Dire questions, or prejudicial failure is sufficient for a new trial, because I think that it ought to be just prejudicial, because here I really can't see where there's any possibility of prejudice. I mean it is just difficult for me to see how her experience of having these losses could possibly have prejudiced the Defendants in this case. I just can't see—oh, I say, "possibly," anything is possible, but that experience doesn't raise any inference at all to me of prejudice against the Defendants in this case.

When the lack of prejudice is so strong, then it seems to me I have to balance that with the strength of the establishment that it was an intentional thing, because I think her acts appear to me to have been much more intentional say than Ms. Pennington. I just can't understand why she didn't hear it, but I'm

not convinced that she did hear it. She said she didn't hear me. There's no evidence that she didn't hear it except the fact that a lot of people sitting around her did, but I am going to find that she didn't intentionally fail to answer the question, and I'm going to find that there is no prejudice resulting to the Defendants as a result of that failure.

I don't think that the verdicts in these cases are contrary to the law, contrary to the instructions of this Court as to the law or contrary to the greater weight of the evidence. I think it was a horse race. I think it was a question of fact. I think that it was submitted to the Jury properly on adequate instructions and that they found the facts in favor of the Plaintiff, and I don't think that finding was contrary to the law, instructions or greater weight of the evidence. It was amply supported by the law and by the facts, and I think that your Motion in that regard must be denied.

* * *

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-1830
C/A 77-1348, 77-1350
& 77-1352

MAUDELL H. FALLAW, FLETCHER L. FALLAW;
SOUTHEASTERN FREIGHT LINES,
Plaintiff-Appellees,

v.

MICHELIN TIRE CORPORATION; LA MANUFACTURE
FRANCAISE DES PNEUMATIQUES MICHELIN,
Defendant-Appellants.

FILED
Aug 19 1980
U.S. Court of Appeals
Fourth Circuit

FILED
Aug 25 1980
Miller C. Foster, Jr., Clerk

ORDER

The above matter came before the undersigned in Baltimore, Maryland on July 7, 1980 for argument.

This was an Interlocutory Appeal from an Order of Judge Robert W. Hemphill ordering the appellant to produce certain design, manufacturing and production specifications of appellant's tire which was opposed on the grounds that the information sought consisted of trade secrets of the appellant.

During the argument of the case, the Plaintiff-Appellees' and Defendant-Appellants' counsel agreed that the issue upon which liability would be determined was whether the tire in

question blew out without being penetrated by an external object, or whether the blowout was caused from the penetration of an external object. It is stipulated by and between counsel for all parties that in the trial of this case the liability of the Defendant-Appellants shall be determined by this issue. If the Plaintiff-Appellees prove to the satisfaction of the jury that the tire in question blew out from a cause other than that of penetration from an external object, the Defendant-Appellants shall be responsible for those damages and injuries proximately caused to the Plaintiff-Appellees. If the jury determines that the blowout was caused by penetration from an external object, then the Defendant-Appellants shall not be responsible for the damages and injuries resulting from the blowout. The Trial Court shall give an appropriate instruction so that the jury will have some understanding with regard to the issue being thusly narrowed.

With the consent of this Court it is agreed that in accordance with the above that the production of the design, manufacturing and production specifications which are required to be produced by the Order of the District Court shall not be produced. Further in accordance with the above, it is agreed that the manner in which the tire in question, or other tires for that matter, were manufactured shall not be relevant issues in this litigation. The Plaintiff-Appellees shall not be required to prove that the tire was negligently designed or manufactured, that the tire was defective in design or manufacture, or that a warranty was breached, either expressed or implied, by the Defendant-Appellants. Likewise, the Defendant-Appellants will not be required to introduce into evidence or divulge or otherwise prove any matters regarding the design, manufacture or production of the tire which is the subject of this litigation, or any other tires produced by them.

Therefore this appeal is dismissed and the case is remanded to the District Court of South Carolina to go forward in accordance with this stipulation and the parties are granted the right

to continue discovery until October 30, 1980, in view of these developments.

AND IS SO ORDERED.

/s/ Harrison L. Winter
HONORABLE HARRISON L. WINTER

/s/ John D. Butzner, Jr.
HONORABLE JOHN D. BUTZNER, JR.

/s/ Francis D. Murnaghan, Jr.
HONORABLE FRANCIS D. MURNAGHAN, JR.

Baltimore, Maryland

WE CONSENT:

WE CONSENT:

SOLOMON, KAHN, ROBERTS & SMITH

/s/ BY: Cody W. Smith, Jr.
CODY W. SMITH JR.

Attorneys for Plaintiff-Appellees,
Maudell H. Fallaw, Fletcher L. Fallaw,
and Southeastern Freight Lines

YOUNG, CLEMENT, RIVERS & TISDALE

/s/ BY: Joseph R. Young
JOSEPH R. YOUNG

HOLMES, THOMSON, LOGAN & CANTRELL

/s/ BY: Wade H. Logan, III
WADE H. LOGAN, III

Attorneys for Defendant-Appellants,
Michelin Tire Corporation and
La Manufacture Francaise Des Pneumatiques Michelin

A True Copy, Teste:
William K. Slate, II, Clerk

/s/ BY: Gail M. Amory
GAIL M. AMORY
Deputy Clerk